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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

JOHN SPEAR,

Plaintiff,

VS.

KONINKLIJKE PHILIPS N.V.,
PHILIPS NORTH AMERICA LLC,
PHILIPS RS NORTH AMERICA LLC;
and DOES 1-100 inclusive

Defendants.

Case No. 2:22-CV-6571

[Removed From Los Angeles Sup. Ct.
Case No. 22NWCV00718]

**NOTICE OF REMOVAL OF
CIVIL ACTION TO THE UNITED
STATES DISTRICT COURT BY
DEFENDANTS PHILIPS NORTH
AMERICA LLC AND PHILIPS RS
NORTH AMERICA LLC**

[Notice of Appearance; Civil Cover Sheet; Corporate Disclosure Statement filed concurrently herewith]

Complaint Filed: August 17, 2022
Complaint Served: N/A
Notice of
Removal Filed: September 14, 2022

1 **TO THE COURT, ALL PARTIES AND THEIR ATTORNEYS OF**
 2 **RECORD:**

3 **PLEASE TAKE NOTICE THAT** Defendants Philips North America LLC
 4 (“Philips North America”) and Philips RS North America LLC (“Philips RS”)
 5 (collectively, “Defendants” or “Philips”)¹ hereby provide notice, pursuant to 28
 6 U.S.C. §§ 1332, 1441, and 1446, of the removal of the above-captioned case from
 7 the Superior Court of the State of California in and for the County of Los Angeles,
 8 in which it is now pending at Case No. 22NWCV00718 (the “Underlying Action”),
 9 to the United States District Court for the Central District of California, and state as
 10 follows:

11 **I. INTRODUCTION**

12 1. On August 17, 2022, John Spear (“Plaintiff”) filed a complaint in the
 13 Superior Court of the State of California in and for the County of Los Angeles, Case
 14 No. 22NWCV00718 (the “Complaint”), attached as **Exhibit A, Complaint**.

15 2. Pursuant to 28 U.S.C. § 1446(a), copies of all process, pleadings, and
 16 orders served to date upon Defendants, including the Complaint, are attached.

17 3. No defendant has been served in this litigation.

18 4. By filing a Notice of Removal, Defendants do not waive their right to
 19 object to service of process, the sufficiency of process, jurisdiction over the parties,
 20 or venue, and Defendants specifically reserve their right to assert any defenses and
 21 objections to which they are entitled.

22 **II. FACTUAL BACKGROUND**

23 5. Plaintiff alleges Philips manufactures and sells ventilators, Continuous
 24 Positive Airway Pressure (“CPAP”), and Bilevel Positive Airway Pressure
 25 (“BiPAP”) machines. Ex. A, ¶¶ 1, 24.

26 1 As of the filing of this Notice, Koninklijke Philips N.V. has not been served with
 27 the Complaint in this action. In the Complaint, Plaintiff acknowledges that
 28 Koninklijke Philips N.V. is “a Dutch multinational corporation with its principal
 place of business located in Amsterdam, Netherlands,” and therefore is diverse from
 Plaintiff. Ex. A, ¶ 13.

1 6. Plaintiff alleges that on June 14, 2021, Philips issued a recall notification
 2 for many of its CPAP and BiPAP devices, as well as a number of its ventilator
 3 devices, due to potential health risks related to the alleged degradation of polyester-
 4 based polyurethane (“PE-PUR”) sound-abatement foam used in the affected devices.
 5 *Id.* ¶¶ 3, 26.

6 7. Plaintiff alleges PE-PUR sound-abatement foam degradation may have
 7 negative health effects, including irritation, inflammatory response, headache,
 8 asthma, adverse effects to organs such as the kidneys and liver, and carcinogenic
 9 effects, and may cause serious injury that can be life-threatening or cause permanent
 10 impairment. *Id.* ¶¶ 3-4, 6, 26, 28-31.

11 8. Plaintiff alleges he purchased a Philips Resironics DreamStation
 12 device numbered J176451130B68 (the “Device”) in or around October 2018, which he
 13 used regularly until approximately August 25, 2021. *Id.* ¶¶ 3.

14 9. Plaintiff contends that he experienced throat irritation, was “diagnosed
 15 with severe health issues,” “experienced anxiety concerning the serious health risks,”
 16 and has “undergone medical treatment and will likely undergo further medical
 17 treatment and procedures,” beginning on September 16, 2021 and continuing
 18 thereafter. *Id.* ¶¶ 9, 10, 42, 52, 60, 69, 72, 89, 98, 103, 123. Plaintiff also alleges he
 19 has incurred medical expenses. *Id.* ¶¶ 10, 52, 60, 69, 72, 89, 98, 103, 123.

20 10. Plaintiff further alleges that the health risks associated with use of the
 21 recalled devices renders them worthless and required him to incur considerable
 22 expense to replace the device (*id.* ¶¶ 10, 32-35), and that Philips unreasonably
 23 delayed its recall (*id.* ¶¶ 36-38).

24 11. The Complaint asserts causes of action for negligent products liability
 25 (design defect, manufacturing defect, and failure to warn), *id.* ¶¶ 49-52; strict
 26 products liability design defect, *id.* ¶¶ 53-62; strict liability manufacturing defect, *id.*
 27 ¶¶ 63-69; strict products liability failure to warn, *id.* ¶¶ 70-74; breach of express
 28 warranty, *id.* ¶¶ 74-89; breach of implied warranty of merchantability, *id.* ¶¶ 90-98;

1 intentionally misrepresentation, *id.* ¶¶ 99-107; concealment, *id.* ¶¶ 108-114; and
 2 negligent misrepresentation, *id.* ¶¶ 115-123.

3 12. Plaintiff demands general damages, special damages, permitted interest
 4 and costs, and any other relief the court considers proper. *Id.* at 22.

5 **III. NOTICE OF REMOVAL IS TIMELY**

6 13. Pursuant to 28 U.S.C. § 1446(b)(2)(B), “each defendant shall have 30
 7 days after receipt by or service on that defendant of the initial pleading or summons”
 8 to file its notice of removal.

9 14. No defendant has been served in this action.

10 15. Pursuant to 28 U.S.C. § 1446(b)(2)(B), “each defendant shall have 30
 11 days after receipt by or service on that defendant of the initial pleading or summons”
 12 to file its notice of removal.

13 16. This notice is timely because it has been filed within thirty days of
 14 service on each defendant.

15 17. Additionally, this notice is timely because it is filed within one year after
 16 commencement of the action pursuant to 28 U.S.C. § 1446(c)(1).

17 **IV. GROUNDS FOR REMOVAL**

18 18. Under 28 U.S.C. § 1441(a), “any civil action brought in a State court of
 19 which the district courts of the United States have original jurisdiction, may be
 20 removed by the defendant . . . to the district court of the United States for the district
 21 and division embracing the place where such action is pending.”

22 19. The court has original subject-matter jurisdiction under 28 U.S.C. §
 23 1332, diversity jurisdiction, because this is a civil action between citizens of different
 24 states and the amount in controversy exceeds \$75,000, exclusive of interest and costs.

25 20. Therefore, Defendants may remove this action to federal court pursuant
 26 to 28 U.S.C. § 1441(b).

27 **A. There is complete diversity.**

28 21. Diversity jurisdiction “require[s] complete diversity of citizenship,” i.e.,

1 “the citizenship of each plaintiff” must be “diverse from the citizenship of each
 2 defendant.” *Caterpillar Inc. v. Lewis*, 519 U.S. 61, 68 (1996); *Jacob, LLC*, 393 F.
 3 Supp. 3d 912, 919 (C.D. Cal. 2019) (“Under the diversity statute, 28 U.S.C. § 1332,
 4 a federal district court has original jurisdiction when the parties are completely
 5 diverse and the amount in controversy exceeds \$75,000.”).

6 22. The general rule is that diversity is determined at the time of the filing
 7 of a lawsuit, not at the time the injuries were suffered. *Miller v. Grgurich*, 763 F.2d
 8 372, 373 (9th Cir. 1985) (“When an action is removed on the basis of diversity, the
 9 requisite diversity must exist at the time the action is removed to federal court.”);
 10 *Murphy v. Am. Gen. Life Ins. Co.*, No. ED CV14-00486 JAK SP, 2014 WL 3417606,
 11 at *2 (C.D. Cal. July 1, 2014).

12 1. Plaintiff is a California citizen.

13 23. An individual is a citizen of the state in which he or she is domiciled.
 14 *Boon v. Allstate Ins. Co.*, 229 F. Supp. 2d 1016, 1019 (C.D. Cal. 2002).

15 24. However, “[i]t is a longstanding principle that ‘[t]he place where a
 16 person lives is taken to be his domicile until facts adduced establish the contrary.’”
 17 *NewGen, LLC v. Safe Cig, LLC*, 840 F.3d 606, 614 (9th Cir. 2016) (citations omitted);
 18 *Lee v. BMW of N. Am., LLC*, No. SACV1901722JVSADSX, 2019 WL 6838911, at
 19 *2 (C.D. Cal. Dec. 16, 2019) (“The Court agrees with [other courts that have held
 20 that residence constitutes prima facie evidence of domicile and citizenship] and holds
 21 that a person’s residence is prima facie evidence of domicile and citizenship.”);
 22 *Jimenez v. Charter Commc’ns Inc.*, 2018 WL 5118492, at *3 (C.D. Cal. Oct. 19,
 23 2018); *Cisneros Pantoja v. RAMCO Enters., L.P.*, No. 19-CV-03336-LHK, 2019 WL
 24 5959630, at *10 (N.D. Cal. Nov. 13, 2019) (“The Court agrees with these courts and
 25 holds that a person’s residence is prima facie evidence of domicile and citizenship.”).

26 25. Plaintiff states he is a resident of the greater Los Angeles, California
 27 area. Ex. A, ¶ 12.

28 26. Thus, Plaintiff is a citizen of California.

1 2. Defendant Philips RS is a citizen of Massachusetts and Delaware.

2 27. Philips RS is a Delaware limited liability company with its principal
3 place of business located in Pennsylvania. **Exhibit B, Philips RS North America**
4 **LLC Corporate Records & Business Registrations.**

5 28. As a limited liability company and for purposes of diversity jurisdiction,
6 however, Philips RS is a citizen of the states where its members are citizens. *Johnson*
7 *v. Columbia Props. Anchorage, LP*, 437 F.3d 894, 899 (9th Cir. 2006).

8 29. Philips RS is wholly owned by a single member, Philips RS North
9 America Holding Corporation, a Delaware corporation with its principal place of
10 business located at 222 Jacobs Street, Cambridge, Massachusetts 02141. **Exhibit C,**
11 **Philips RS North America Holding Corporation Corporate Records & Business**
12 **Registrations.**

13 30. For diversity purposes, a corporation is a citizen of both the state where
14 it is incorporated and the state where it has its principal place of business. 28 U.S.C.
15 § 1332(c)(1).

16 31. Accordingly, because Philips RS North America Holding Corporation
17 is a citizen of both Delaware and Massachusetts, Philips RS is also a citizen of both
18 Delaware and Massachusetts. Philips RS is therefore a citizen of states different than
19 Plaintiff.

20 3. Defendant Philips North America is a citizen of Delaware and
21 Massachusetts.

22 32. Philips North America is a Delaware limited liability company with its
23 principal place of business in Massachusetts. **Exhibit D, Philips North America**
24 **LLC Corporate Records & Business Registrations.**

25 33. Philips North America is wholly owned by a single member, Philips
26 Holding USA, Inc., a Delaware corporation with its principal place of business
27 located at 222 Jacobs Street, Cambridge, MA 02141. **Exhibit E, Philips Holding**

1 **USA, Inc., Corporate Records & Business Registrations.**

2 34. Accordingly, because Philips Holding, Inc., is a citizen of both
 3 Delaware and Massachusetts, Philips North America is also a citizen of both
 4 Delaware and Massachusetts. Therefore, Philips North America is diverse from
 5 Plaintiff. *See Johnson*, 437 F.3d at 899 (explaining that LLC has citizenship of its
 6 members); 28 U.S.C. § 1332(c)(1) (explaining that a corporation is a citizen of the
 7 state where it is incorporated and the state of its principal place of business).

8 4. The citizenship of fictitiously named defendants is not counted
 9 toward diversity jurisdiction and is therefore irrelevant.

10 35. Plaintiff names DOES 1-100 as fictitiously named defendants. Ex. A,
 11 ¶¶ 16-18.

12 36. In determining whether a civil action is removable on the basis of
 13 diversity jurisdiction, the citizenship of defendants sued under fictitious names is
 14 disregarded. 28 U.S.C. § 1441(b)(1); *Soliman v. Philip Morris Inc.*, 311 F.3d 966,
 15 971 (9th Cir. 2002) (“The citizenship of fictitious defendants is disregarded for
 16 removal purposes and becomes relevant only if and when the plaintiff seeks leave to
 17 substitute a named defendant.”); *Goldsmith v. CVS Pharmacy, Inc.*, No. CV 20-
 18 00750-AB (JCX), 2020 WL 1650750, at *4 (C.D. Cal. Apr. 3, 2020).

19 37. Therefore, the citizenship of DOES 1-100 has no bearing on diversity
 20 of citizenship here.

21 5. Therefore, there is complete diversity of citizenship.

22 38. Accordingly, there is complete diversity between the parties.

<u>Plaintiff</u>	<u>Defendants</u>
James Spear (CA)	Philips North America (DE/MA)
	Philips RS (DE/MA)

1 **B. The amount-in-controversy requirement is satisfied.**

2 39. There plainly is more than \$75,000, exclusive of interest and costs, in
 3 controversy. *See* 28 U.S.C. § 1332(a).

4 40. Plaintiff does not explicitly plead in the Complaint that the amount in
 5 controversy exceeds \$75,000. Given the nature and extent of Plaintiff's allegations
 6 and injuries, however, the amount in controversy plainly exceeds the jurisdictional
 7 threshold exclusive of interests and costs.

8 41. Although Defendants deny liability to Plaintiff, the nature of the case (a
 9 medical device products liability action), the harm alleged ("severe health issues,"
 10 Ex. A, ¶ 9, emotional suffering, and financial and economic loss), and the nature of
 11 the damages requested (general damages, special damages, among others) clearly
 12 place more than \$75,000, exclusive of interest and costs, in controversy.

13 42. "[A] defendant's notice of removal need include only a plausible
 14 allegation that the amount in controversy exceeds the jurisdictional threshold." *Dart*
 15 *Cherokee Basin Operating Co., LLC v. Owens*, 574 U.S. 81, 89 (2014); *Acad. of*
 16 *Country Music v. Cont'l Cas. Co.*, 991 F.3d 1059, 1068 (9th Cir. 2021) (citation
 17 omitted); *Rahmatullah v. Charter Commc'ns, LLC*, No. EDCV20354PSGSPX, 2020
 18 WL 4014746, at *2 (C.D. Cal. July 15, 2020).

19 43. In *Black v. Monster Beverage Corp.*, the court found the amount-in-
 20 controversy requirement satisfied in an action for strict product liability, negligence,
 21 fraudulent concealment, and breach of implied warranties where plaintiffs sought
 22 compensatory damages for severe injuries, medical expenses, reduced earning
 23 capacity, lost wages, and loss of consortium. No. EDCV1502203MWFDTB, 2016
 24 WL 81474, at *1 (C.D. Cal. Jan. 7, 2016).

25 44. In *Campbell v. Bridgestone/Firestone, Inc.*, plaintiffs asserted strict
 26 products liability, negligence, and breach of warranty claims, seeking compensatory
 27 damages for wage loss, loss of use of property, hospital and medical expenses,
 28 general damage, property damage and loss of earning capacity. No.

1 CIVF051499FVSDLB, 2006 WL 707291, at *2 (E.D. Cal. Mar. 17, 2006). The court
 2 held that it was facially apparent that the amount in controversy exceeds \$75,000.00,
 3 noting that, in addition to damages sought, plaintiffs' claims included "severe
 4 injury." *Id.* at *3.

5 45. The *In re: Incretin Mimetics Products Liability Litigation* court found
 6 the amount-in-controversy requirement satisfied in a products liability action where
 7 plaintiffs alleged serious injury, and sought to recover past and future compensatory
 8 damages, medical and incidental expenses, loss of earnings and earning capacities,
 9 and future medical monitoring. No. 13MD2452 AJB (MDD), 2015 WL 11658714,
 10 at *4 (S.D. Cal. Mar. 16, 2015).

11 46. In *Hammarlund v. C.R. Bard, Incorporated*, the court concluded that
 12 "[i]n cases involving severe injuries, especially those requiring surgery, courts have
 13 found it facially apparent from the complaint that the amount in controversy was
 14 satisfied." No. 215CV05506SVWJEM, 2015 WL 5826780, at *2 (C.D. Cal. Oct. 2,
 15 2015) (finding amount in controversy satisfied in personal injury suit).

16 47. In *Bryant v. Apotex, Inc.*, plaintiff brought claims in negligence,
 17 intentional tort, products liability, and fraud for failure to warn. No. 1:12-CV-01377-
 18 LJO, 2012 WL 5933042, at *4 (E.D. Cal. Nov. 27, 2012). Plaintiff sought
 19 compensatory damages for injuries and severe pain, emotional distress, and punitive
 20 damages. *Id.* at *4. The court held that because of the allegations and demands, in
 21 addition to the finding that similar cases resulted in jury verdicts over \$75,000, the
 22 amount in controversy was satisfied in this case, as well. *Id.*

23 48. Similarly, Plaintiff alleges "severe" injuries, emotional injuries,
 24 financial injuries, and economic injuries. He alleges he has "undergone medical
 25 treatment and will likely undergo further medical treatment." Ex. A, ¶¶ 42, 52, 60,
 26 69, 72, 89, 98, 103, 123. He is seeking to recover general damages and special
 27 damages for these injuries, including medical expenses.

28 49. Based on these allegations, Plaintiff's claims, if proved, would exceed

1 \$75,000.00, exclusive of interest and costs. Accordingly, the amount-in-controversy
 2 requirement is satisfied.

3 **V. VENUE**

4 50. This lawsuit may be removed to the United States District Court for the
 5 Central District of California pursuant to 28 U.S.C. §§ 1332(a)(1) and 1441(a).

6 51. The United States District Court for the Central District of California is
 7 the federal judicial district encompassing the Superior Court of the State of California
 8 in and for the County of Los Angeles, where this suit was originally filed. 28 U.S.C.
 9 § 84(c)(2).

10 52. On October 8, 2021, the United States Judicial Panel on Multidistrict
 11 Litigation issued a Transfer Order consolidating related class action cases and
 12 individual personal injury cases such as this matter into a multidistrict litigation
 13 (MDL 3014) and ordering their transfer to the Western District of Pennsylvania
 14 before the Honorable Joy Flowers Conti (the “MDL”) for coordinated or consolidated
 15 pretrial proceedings. **Exhibit F, Transfer Order.**

16 53. It is anticipated that this case will be transferred to the MDL following
 17 removal.

18 **VI. CONSENT**

19 54. Each Defendant that has been properly joined and served consents to
 20 removal as required by 28 U.S.C. § 1446(b)(2).

21 **VII. PROCEDURE**

22 55. Written notice of the filing of the Notice of Removal will be promptly
 23 served on all other parties to this action and a copy will be promptly filed with the
 24 Superior Court of the State of California in and for the County of Los Angeles, as
 25 required by 28 U.S.C. § 1446(d).

26 56. Included with this Notice of Removal is the filing fee of \$350 required
 27 by 28 U.S.C. § 1914.

28

1 **VIII. CONCLUSION**

2 Defendants respectfully remove this action from the Superior Court of the
3 State of California in and for the County of Los Angeles to the United States District
4 Court for the Central District of California.

5 Respectfully submitted,

6 John P. Lavelle, Jr.
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By /s/ Michael H. Steinberg
Michael H. Steinberg

16 *Of Counsel for Defendant Philips North*
17 *America LLC*

Attorneys for Defendant
Philips North America LLC

18 Dated: September 14, 2022

CERTIFICATE OF SERVICE

I certify that on September 14, 2022 I filed this Notice of Removal with the Clerk of the Court via CM/ECF system and first class mail, which will send notice of electronic filing to:

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